

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



**In re:**

**Geoffrey David Muther and  
Kathy Doris Muther,  
Debtors.**

**Chapter 13 Case  
# 12-10029**

**Geoffrey David Muther and  
Kathy Doris Muther,  
Plaintiffs,**

**Adversary Proceeding  
# 12-1002**

**v.**

**CitiMortgage, Inc., Fidelity Mortgage  
Of NY, A Division of Delta Funding  
Corporation; Mortgage Electronic  
Registration Systems, Inc.,  
Defendants.**

*Appearances:*

*Michelle M. Kainen, Esq.  
Kainen Law Office, P.C.  
White River Junction, VT  
Attorney for Plaintiffs*

*Shannon A. Bertrand, Esq.  
Kenlan, Schweibert, Facey & Goss, P.C.  
Rutland, VT  
Attorney for Defendants*

*Andrew S. Canella, Esq.  
Bendett & McHugh, P.C.  
Farmington, CT  
Attorney for Defendants*

**ORDER**

**GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT,  
DENYING PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT,  
AND DENYING DEFENDANT CITIMORTGAGE'S MOTION FOR SANCTIONS**

For the reasons set forth in the memorandum of decision of even date, THE COURT FINDS that, under Vermont's homestead laws, (i) Mrs. Muther needs to have a homestead interest in the Property<sup>1</sup> in order to be a necessary party to the 2007 Fidelity Mortgage, and to challenge the validity of that mortgage, under 27 V.S.A. § 141(a); (ii) Mrs. Muther's homestead interest was extinguished by the 1997 Conveyance by virtue of the retroactive application of 27 V.S.A. § 141(d), thereby depriving her of the right to challenge the validity of the 2007 Fidelity Mortgage; and (iii) neither the terms of the 1997 Conveyance, nor Mrs. Muther's post-conveyance conduct, are sufficient to revive her homestead interest in the Property. Accordingly, the Plaintiffs' prayer for relief in the complaint to void the 2007 Fidelity

<sup>1</sup> All capitalized terms in this order have the same definition as set forth in the Memorandum of Decision.

Mortgage is denied and the Defendants are entitled to judgment as a matter of law in this adversary proceeding. THE COURT FURTHER FINDS that the Defendant CitiMortgage has failed to establish a sufficient legal basis for an award of sanctions in this case.

Therefore, IT IS HEREBY ORDERED that:

1. the Defendants' motion for summary judgment, originally filed as a motion to dismiss (doc. # 10), is GRANTED;
2. the Plaintiffs' cross-motion for summary judgment, originally filed as an objection to the Defendants' motion to dismiss (doc. # 16), is DENIED;
3. judgment is entered in favor of the Defendants in this adversary proceeding; and
4. the Defendant CitiMortgage's motion for sanctions (doc. # 15) is DENIED.

SO ORDERED.

September 28, 2012  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge